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ABSTRACT

The No Child Left Behind Act (NCLBA) established 2 flexibility demonstration programs--State- and Local-Flex--that allow up to 7 states and 80 school districts to redirect up to 100 percent of certain NCLBA programs funds. The General Accounting Office (GAO) was asked to determine factors that affect states' and districts' decisions about whether to apply for the programs and to determine the extent to which the Department of Education publicized, provided guidance, and established a process to review and award programs. GAO conducted a study, using telephone interviews, with officials in 22 states and 37 school districts, and site visits to 2 of the 4 applicants. The 1 applicant for State-Flex and the 3 for Local-Flex cited 2 main reasons why they applied: (1) the commitment of leadership and (2) the ability to develop goals and strategies to improve student achievement. States did not apply because few perceived benefits and because of conflicts dealing with other NCLBA requirements. School districts did not apply primarily due to lack of awareness of the programs. GAO recommends that the Department of Education better target information to states and districts in the best position to apply for additional flexibility. (Author/WFA)

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United States General Accounting Office

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Report to Congressional Requesters

June 2003

FLEXIBILITY DEMONSTRATION PROGRAMS

Education Needs to Better Target Program Information

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Highlights

Highlights of GAO-03-691, a report to Congressional Requesters

FLEXIBILITY DEMONSTRATION PROGRAMS

Education Needs to Better Target Program Information

Why GAO Did This Study

The No Child Left Behind Act of 2001 (NCLBA) has focused national attention on increasing accountability for states and school districts to improve student achievement. While increasing accountability, NCLBA also provided states and school districts with additional flexibility. The act established two flexibility demonstration programs—State- and Local-Flex—which allow up to 7 states and 80 school districts to redirect up to 100 percent of certain NCLBA program funds.

GAO was asked to determine factors that affect states' and districts' decisions whether or not to apply for the demonstration programs and to determine the extent to which the U.S. Department of Education publicized, provided guidance, and established a process to review and award flexibility demonstration programs. To address these questions, GAO conducted a study, using telephone interviews with officials in 22 states and 37 school districts, and site visits to 2 of the four applicants.

What GAO Recommends

GAO recommends that the U.S. Department of Education better target information to states and districts in the best position to apply for additional flexibility.

What GAO Found

The one applicant for State-Flex and the three applicants for Local-Flex cited two main reasons why they applied—the commitment of leadership and the ability to develop goals and strategies to improve student achievement. In contrast, states did not apply primarily due to few perceived benefits, as well as conflicting deadlines with other NCLBA requirements, while school districts did not apply primarily due to a lack of awareness about the program. In particular, state officials said they were busy completing mandatory draft plans for measuring student achievement. Additionally, these state officials indicated that they needed student achievement data based on these plans in order to apply for State-Flex. Officials in other states said that less time-consuming options to transfer funds were preferable to State-Flex due to the time and effort required to complete the State-Flex application and develop agreements with school districts. Finally, most school district officials GAO spoke with did not apply for Local-Flex because they were not aware of the program.

Education publicized the flexibility demonstration programs in routine channels, such as the *Federal Register*, at conferences informing states and school districts about NCLBA, and in letters to nearly 200 of the largest districts. However, Education's communication strategy did not target those potential applicants in the best position to apply—states and districts that had developed goals and strategies to improve student achievement and narrow achievement gaps. Additionally, Education provided guidance on the application process and assisted interested applicants. However, the two applicants GAO visited said that more guidance was needed in some areas, such as how to demonstrate that funds would be used for allowable purposes. Finally, while Education has developed criteria and procedures for reviewing and awarding flexibility, it is too early to comment on its processes because it has not made awards under these two flexibility programs to any state or district.

www.gao.gov/cgi-bin/getrpt?GAO-03-691.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Marnie S. Shaul (202)-512-7215 or shaulm@gao.gov.

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Abbreviations

AYP	Adequate Yearly Progress
ESEA	Elementary and Secondary Education Act
NCLBA	No Child Left Behind Act
REAP	Rural Education Achievement Program

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United States General Accounting Office
Washington, DC 20548

June 9, 2003

The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable George M. Miller
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

The No Child Left Behind Act of 2001 (NCLBA) has focused national attention on increasing accountability for states and school districts to improve student achievement. Specifically, NCLBA requires that states define student proficiency in mathematics, reading or language arts, and science and establish goals for all students to achieve these proficiency levels by 2013-14. While increasing accountability, NCLBA also provided states and school districts with additional flexibility to use federal funds to better meet education needs. Specifically, the act expanded options for all states and school districts to transfer up to one-half of federal funds among several specified NCLBA programs. Additionally, the act created two flexibility demonstration programs—State- and Local-Flex—in which up to 7 states[1] and 150 districts could participate. These programs give states and school districts additional flexibility to consolidate and redirect up to 100 percent of certain NCLBA program funds. Of the approximately $23.8 billion appropriated for NCLBA programs in fiscal year 2003, approximately $3.6 billion was allocated to districts for programs covered by Local-Flex and about $650 million is available to states under programs covered by State-Flex. Due to concerns over design and implementation of the demonstration programs, you asked us to determine (1) the factors that affect states' and districts' decisions whether or not to apply for the flexibility demonstration programs and (2) the extent to which the Department of Education publicized, provided guidance to interested

[1]State-Flex requires participating states to have Local Performance Agreements with 4 to 10 school districts. A Local Performance Agreement is similar to Local-Flex, but school districts apply for flexibility authority through the state rather than directly to the U.S. Department of Education.

applicants, and established a process to review and award flexibility demonstration programs.

To obtain this information, we interviewed officials in the 1 state and 3 school districts that applied for the flexibility demonstration programs.[2] We also interviewed officials from 12 states and 8 districts that expressed intent to apply but did not apply and officials in 9 states and 26 districts that neither applied for nor expressed interest in the programs. We selected states and districts that did not apply or express interest based on geographic location and level of student enrollment. Additionally, we conducted a site visit to two applicants—the Florida Department of Education and Seattle Public Schools—to gain a better understanding of what was involved in applying for the programs and how they proposed to use additional flexibility. Finally, we reviewed Education's program documentation and interviewed Education officials. We conducted our work between January and May 2003 in accordance with generally accepted government auditing standards.

Results in Brief

Officials in the 1 state and 3 school districts that applied for the flexibility demonstration programs cited two main reasons why they applied: (1) the commitment of leadership to make full use of federal flexibility provisions as soon as possible and (2) the ability and willingness to develop goals and strategies demonstrating how additional flexibility would be used to improve student achievement even though it was possible they would have to revise these plans later. For example, 1 school district superintendent said his district was committed to participating in the Local-Flex program because it was important to demonstrate that additional flexibility could be used to better target federal program dollars to improve student achievement. According to district officials, the district was willing to go forward with its application using available data despite the possibility that it would need to revise its application to conform to final state student performance goals that had yet to be approved. In contrast, state officials we spoke with did not apply for State-Flex due to conflicts with other NCLBA requirements and few perceived benefits; while school district officials we spoke with did not apply primarily due to a lack of awareness about the Local-Flex program. Specifically, officials we spoke with in 8 states said they did not apply for State-Flex by the February 28, 2003,

[2]Two districts applied that had not previously signaled their intent to apply. The other district and the state that applied both had previously signaled their intent to apply.

application deadline because they were busy completing mandatory draft accountability plans and they needed the information in these plans in order to complete the State-Flex application. The primary reason cited by the other states for not applying was that State-Flex did not provide sufficient benefits to justify the effort involved in completing an application. Specifically, these state officials said that less time-consuming options to transfer funds were preferable to State-Flex due to the time and effort required to complete the State-Flex application and develop agreements with between 4 and 10 school districts. Finally, officials in 20 of 34 districts that did not apply for Local-Flex said they were not aware of the program. Of the remaining 14 school districts that were aware of Local-Flex but did not apply, officials cited a variety of reasons, such as having sufficient flexibility through other provisions or being busy with other district-level initiatives.

Education publicized the flexibility demonstration programs in routine channels, such as the *Federal Register*, provided some guidance, and has begun reviewing program applications, but its communication about the programs was not targeted at those states and school districts in the best position to apply. Specifically, Education publicized the programs at conferences informing states and school districts about NCLBA, in letters to nearly 200 of the largest districts, and through the *Federal Register*. Also, in its 2002-07 Strategic Plan, Education established strategies to publicize flexibility provisions by aggressively communicating flexibility opportunities, including State- and Local-Flex, to states and school districts. However, Education's communication strategy for these demonstration programs was not targeted at those potential applicants in the best position to apply—states and districts that had developed goals and strategies to improve student achievement and narrow achievement gaps and as a result were more likely to be able to use flexibility provisions to achieve their goals. Additionally, Education provided guidance on the application process and assisted interested applicants. However, the two applicants we visited said that more guidance was needed in some areas, such as how to demonstrate that funds would be used for allowable purposes. Finally, while Education has developed criteria and procedures for reviewing and awarding flexibility, it is too early to comment on its processes because it has not made awards under these two flexibility programs to any state or district.

Given the information needed to apply for the flexibility programs and the general lack of awareness among school districts, we are recommending that Education better target information to states and districts in the best position to apply for additional flexibility.

Background

NCLBA provides for increased accountability by requiring states and school districts to improve student achievement. Specifically, NCLBA requires states to establish definitions of proficiency for students in math, reading/language arts, and science. To measure student achievement, NCLBA requires states to establish student assessment systems and to annually test students in grades 3 through 8 and once in high school in math and reading/language arts by 2005-06 and once in elementary, middle, and high school in science by 2007-08. States must also establish Adequate Yearly Progress (AYP) goals, with the ultimate goal that all students achieve state standards for proficiency by 2013-14. Additionally, the following subgroups must meet AYP goals: (1) students from major racial and ethnic groups, (2) students with limited English proficiency, (3) students with disabilities, and (4) economically disadvantaged students. Districts and schools failing to meet AYP for 2 consecutive years are designated as needing improvement and are required to take actions to address student achievement problems, with additional sanctions added to schools that continue to not meet AYP. Education required all states to develop and submit draft accountability plans by January 31, 2003, in order to assist them in having approved accountability plans in place prior to submitting their consolidated applications for NCLBA program funds. All states submitted draft accountability plans by January 31, 2003, and as of May 1, 2003, 20 states had accountability plans approved.

To support the new accountability requirements, NCLBA established several options that permit states and school districts to redirect specified NCLBA program funds.[3] First, NCLBA established two flexibility demonstration programs—State- and Local-Flex. These programs provide authority for up to 5 years to a maximum of 7 states and 150 school districts[4] to consolidate 100 percent of specified federal funds and use those funds for any purpose under NCLBA in order to assist them in meeting AYP.[5] Additionally, the act established a transferability option whereby states and school districts can transfer up to 50 percent of their

[3]These options allow approved states and districts to consolidate or redirect specified federal funds and do not provide additional funds.

[4]Of the school districts, 150 represent the sum of 80 school districts eligible for Local-Flex plus 70 school districts entering into Local Performance Agreements under State-Flex—the maximum number possible if 7 states are awarded State-Flex and enter into Local Performance Agreements with 10 school districts, the maximum allowed under NCLBA.

[5]States and districts failing to meet AYP for 2 consecutive years will have their flexibility authority removed.

federal funds among certain programs or into Title I - Part A.[6] Such transfers do not require prior approval from Education. Finally, NCLBA expanded flexibility for rural schools under the Rural Education Achievement Program (REAP) in which rural school districts, after notifying their states, have greater flexibility in the use of their funds from four NCLBA programs, also without prior approval from Education. Table 1 lists the programs that states and districts can consolidate or transfer funds from.

Table 1: Percentage of NCLBA Program Funds Eligible for Transferability, State- and Local-Flex, and REAP Alternative Uses

	Transferability				
NCBLA program	**State transfers[a]**	**District transfers**	**State-Flex[b]**	**Local-Flex**	**REAP alternative uses**
Eligibility	**All states[c]**	**All districts[c]**	**7 states[d]**	**80 districts[d,e]**	**4,749 districts[f]**
Teacher and Principal Training and Recruiting	50%	50%	100%	100%	100%
Enhancing Education through Technology	50%	50%	100%	100%	100%
Safe and Drug Free Schools (SEA funds)	50%	50%	100%	100%	100%
Safe and Drug Free Schools (Governor's program)	50%	NA[g]	100%	NA	NA
21st Century Community Learning Centers	50%	NA	100%	NA	NA
Innovative Programs	50%	50%	100%	100%	100%
Reading First	NA	NA	100%	NA	NA
Title I: Improving Academic Achievement of Disadvantaged Students—Section 1004 (state administration)	NA	NA	100%	NA	NA
Transfer/use of funds	Among these 6 programs or into Title I	Among these 4 programs or into Title I	For any purpose under NCLBA	For any purpose under NCLBA	For any activity under these 4 programs, or Title I, 21st Century Learning Centers, or Language Instruction

Source: GAO analysis

[a]State transfers are allowed for nonadministrative state-level activities funds only.

[b]State-Flex authority applies to administrative and state-level activities funds only. Under State-Flex, districts with local performance agreements can consolidate funds in the same manner as districts receiving Local-Flex.

[c]Districts identified for improvement can only transfer up to 30 percent of its funds.

[d]State- and Local-Flex are awarded by the Department of Education.

[6]Districts designated for improvement can only transfer up to 30 percent of the program funds.

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[a]Up to 80 school districts are eligible for Local-Flex. As many as 70 other districts may receive flexibility authority, if 7 states are awarded State-Flex and all 7 select 10 school districts for Local Performance Agreements.

[b]To be eligible for combining funds a school district must have fewer than 600 students or be located in an area with a population density of fewer than 10 persons per square mile, and it must also be located in a community with fewer than 2,500 residents, or is located in a rural community. Education estimated the number of school districts eligible for REAP (4,749) for fiscal year 2002.

[c]N/A means not applicable, i.e., program funds are not authorized for transferability, Local-Flex, or REAP.

Of the approximately $23.8 billion appropriated for NCLBA programs in fiscal year 2003, roughly $18.6 billion, or about 78 percent, was appropriated for programs covered by the four flexibility provisions. For states, about $650 million of this $18.6 billion is available for state-level activities and state administration under programs covered by State-Flex. Additionally, one-half of the approximately $200 million available for state activities was eligible for transferability. The difference in the eligible amounts between these two programs is primarily because State-Flex allows for the consolidation of state-level funds under a greater number of programs and includes both administrative and nonadministrative funds, whereas transferability only allows for transfers of nonadministrative funds. Approximately $3.6 billion flows to districts through the programs covered under Local-Flex, which is very near the approximately $3.7 billion available under transferability provisions.[7] According to the most recent available estimates developed by the U.S. Department of Education, about $12 million was available for alternative uses under REAP in fiscal year 2001. Table 2 provides information on the amounts available under the various NCLBA flexibility provisions.

[7]This difference is due to the fact that the District of Columbia, Hawaii, and Puerto Rico would be eligible to use transferability at their school districts, but could not apply for Local-Flex.

Table 2: Estimated Eligible Funds for Transferability, State- and Local-Flex, and REAP Alternative Uses

Dollars in millions

NCBLA program	Total Fiscal Year 2003 appropriation	Transferability		State-Flex[b]	Local-Flex[c]	REAP Alternative Uses[d]
		State transfers[a]	District transfers[a]			
Eligible Funds		State-level activities funds	Formula funds[a]	State-level activities and administrative funds	Formula funds[a]	Formula funds
Teacher and Principal Training and Recruiting[f]	$2,930.8	$72.2	$2,715.2	$68.7	$2,598.7	[e]
Enhancing Education Through Technology[g]	696	32.1	305.4	30.9	292.5	[e]
Safe and Drug Free Schools (SEA funds)[h]	468.9	18.3	341.1	28.5	353.9	[e]
Safe and Drug Free Schools (Governor's program)[h]	Total included in SEA funds total above	NA[m]	NA	2.7	NA	NA
21st Century Community Learning Centers[i]	993.5	16.5	NA	26.5	NA	NA
Innovative Programs[j]	382.5	57	322.8	55.9	315	[e]
Reading First[k]	993.5	NA	NA	321.6	NA	NA
Title I: Improving Academic Achievement of Disadvantaged Students—Section 1004 (State Administration)[l]	12,128.4	NA	NA	116.2	NA	NA
Total	**$18,593.6**	**$196.1**	**$3,684.5**	**$651.0**	**$3,560.1**	**$12**

Source: GAO analysis.

Note: Estimates for transferability and State- and Local-Flex were based on Education's March 14, 2003 estimates of state budget allocations. Allocations may change when final data become available. Estimate for REAP Alternative Uses is Education's estimate for FY 2001.

[a]The 50 states, the District of Columbia, and Puerto Rico and their school districts are eligible to use transferability.

[b]Hawaii, Puerto Rico, and outlying areas such as Guam and America Somoa are not eligible to apply for State-Flex because they do not have the minimum number of school districts required for State-Flex. Consequently, their allocations are not included in these totals.

[c]The District of Columbia, Hawaii, Puerto Rico, and outlying areas are ineligible to apply for Local-Flex. School districts entering into local performance agreements with their state as part of a State-Flex agreement would be allowed to consolidate and transfer the funds listed here.

[d]The most recent available data for REAP were developed by Education for fiscal year 2001. The department was not able to provide a break down by program.

[a]Transferability and Local-Flex are only available for formula funds that school districts receive under each program. Formulas for each program are provided in NCLBA and the general distribution of program dollars is described in the following notes.

[b]A state can use up to 2.5 percent of its Teacher and Principal Training and Recruiting grant for state activities. School districts receive 95 percent of the state grant by formula.

[c]Under the Enhancing Education through Technology Program, a state can use no more than 5 percent of its grant to carry out state activities. Of the remaining 95 percent, one-half must be distributed by formula to school districts and the remainder is awarded to school districts on a competitive basis.

[d]Under the Safe and Drug Free Schools Program, a state can elect to reserve up to 20 percent of its grant for a Governor's program to award grants to school districts on a competitive basis. Up to 3 percent of the Governor's program funds can be used for administrative purposes. Of the remaining amount not used for the Governor's program, not less than 93 percent must be distributed to school districts. Once funds are set aside for the Governor's program and funds are allocated to school districts, a state may use up to 3 percent of remainder for administrative purposes and up to 5 percent for state activities. These estimates assume all states elect to use the maximum amount, 20 percent, for the Governor's program.

[e]States can use not more than 2 percent of their 21st Century Community Learning Centers grant for administration and not more than 3 percent for state activities. States must allot at least 95 percent of their grant to school districts.

[f]States must award 85 percent of Innovative Program funds to school districts based on a formula and can use the remaining 15 percent for state administration.

[g]States can use up to 25 percent of their Reading First allocation to provide technical assistance to school districts and up to 10 percent for planning, administration, and reporting.

[h]Under Section 1004 of the NCLBA, states can use up to the greater of $400,000 or 1 percent of their grants received under Title I Part A—Improving Basic Programs Operated by Local Education Agencies, C—Education of Migratory Children, and D—Neglected and Delinquent Programs for administrative purposes.

[i]Not applicable.

State- and Local-Flex provide various mechanisms to assist states and school districts in their efforts to improve student achievement. First, State-Flex allows states to consolidate NCLBA state administrative and state-level activities funds—that are to be used for such activities as technical assistance and professional development—and use them for any purpose under NCLBA. Second, states that are awarded State-Flex would also have the authority to specify how all school districts in the state use Innovative Program funds.[8] Finally, as part of a State-Flex agreement, a state must enter into local performance agreements with 4 to 10 school districts in the state, at least half of which must have 20 percent or more of its student population living in poverty. Districts with Local-Flex or

[8]Innovative Programs established under Title V, Part A of NCLBA is a formula grant program to school districts through states. Innovative Program funds may be used for various activities, including developing high-quality assessments, programs to recruit high-quality teachers, and programs for pre-kindergarten students.

operating under local performance agreements can consolidate administrative and programmatic funds for four NCLBA programs and use them for any purpose under NCLBA.

Both State- and Local-Flex programs limit which states and school districts can apply. For example, in order to be eligible to apply by the February 28, 2003, deadline for State-Flex, a state must have submitted a draft accountability plan to Education by January 31, 2003. To be eligible to apply for Local-Flex, a district cannot be located in a state that expressed its intent to apply for State-Flex by May 8, 2002, or in a state that has been awarded State-Flex authority. Also, no more than 3 districts in any state may be awarded authority under the Local-Flex program. However, because Education initiated the Local-Flex application process before the State-Flex application process, it has ruled that if any school districts in a state have been awarded Local-Flex authority then that state can apply for State-Flex only if those school districts agree to become part of the State-Flex application.

As part of their application for the flexibility programs, states and school districts had to show how consolidated funds would be used to meet AYP goals for improving student achievement and narrowing achievement gaps and provide several assurances on how they would use flexibility. To demonstrate how AYP goals would be met, states and districts were required to provide baseline student achievement data from the most recent available school year. Also, to the extent possible, data were to be disaggregated by (1) each major racial and ethnic group; (2) English proficiency status; (3) disability status; and (4) status as economically disadvantaged, in order to demonstrate the existence of achievement gaps between these groups and the general student population. On the basis of this information, states and districts were to develop goals and strategies that demonstrated how they would use flexibility to meet AYP goals, including goals for addressing achievement gaps. Additionally, states and districts were required to provide several assurances as part of their application, including that adequate fiscal controls were in place to ensure the proper disbursement of and accounting for federal program funds and that federal funds would be used to supplement the amount of funds that, in the absence of federal funds, would be made available from nonfederal sources.

Commitment of Leadership and Capacity Influenced Decisions to Apply While Conflicting Deadlines, Few Perceived Benefits, and Limited Awareness Influenced Decisions Not to Apply

Officials in the 1 state and 3 school districts that applied for the flexibility demonstration programs did so because of the commitment of leadership to make full use of federal flexibility provisions as soon as possible, and the ability and willingness to develop goals and strategies demonstrating how additional flexibility would be used to improve student achievement even though it was possible they would have to revise these plans later. Officials in states and districts we contacted that did not apply cited conflicting deadlines, too few benefits, or limited awareness of the programs as key reasons they did not apply.

Applicants Cite Commitment of Leadership and the Presence of Strategies to Improve Student Achievement as Key Factors Influencing Their Decisions to Apply

According to applicants we spoke with, one key factor that influenced their decision to apply was leadership's commitment to gaining greater flexibility. For example, the Superintendent of the Seattle Public Schools said he was committed to participating in the Local-Flex program for his district because it was important to demonstrate that additional flexibility could be used to better target federal program dollars to improve student achievement. According to district officials, the district was willing to go forward with its application using available data despite the possibility that it would need to revise its application to conform to final state student performance goals that had yet to be approved. Similarly, officials in Florida said that it was important to state leaders that Florida apply as part of its effort to be "first and best in education." Officials representing the other district applicants—Bangor, Michigan, and Traverse City, Michigan—also reported that district leadership took an active role in developing the application.[9]

State and district officials we spoke with said that a second factor influencing their decision to apply was that the added flexibility afforded through the demonstration programs would allow them to better coordinate federal funds to fit with their strategies to improve student achievement and narrow achievement gaps. These applicants were able to

[9]Bangor and Traverse City school districts found out about the Local-Flex program from a consultant to the school districts.

disaggregate student achievement data by subgroups (such as economically disadvantaged and limited English proficiency), which facilitated their ability to identify achievement gaps and develop strategies to use consolidated funds in ways they could not under original program restrictions. For example, the Seattle school district had implemented local initiatives to address achievement gaps between minority and nonminority groups and was able to narrow achievement gaps for some groups, but not sufficiently for Hispanic students. The district wanted to use authority under Local-Flex to transfer federal Teacher and Principal Training and Recruiting program funds to other programs specifically targeted to improve the performance of Hispanic students.

Conflicting Deadlines, Few Perceived Benefits, and Limited Awareness of Flexibility Demonstrations Were Cited as Key Factors in Decisions Not to Apply

For the State-Flex program, officials in 8 states said they did not apply for State-Flex because they were busy completing accountability plans and that they needed the information in these plans in order to complete the program application. First, state officials told us that the accountability plans—due to Education by January 31, 2003—took a lot of time and effort to complete and left them with only 1 month to complete the State-Flex application, due February 28. Second, these state officials said they did not apply because they preferred to wait until their accountability plans were approved. The accountability plans included AYP definitions needed to develop baseline data on student achievement required for the State-Flex application. In order to be eligible to apply for State-Flex, Education required states to have submitted draft accountability plans by the January 31, 2003, deadline. Education reviews these draft accountability plans and may require states to make changes before final approval. As a result, states could be required to revise their State-Flex applications based on changes Education required states to make to their accountability plans.

Of the other 13 states, 10 did not apply for the program because of concerns that State-Flex did not provide sufficient benefits to justify the effort involved in completing an application.[10] In particular, these state officials said the availability of other transferability options that allowed states to transfer up to 50 percent of state-level activities funds provided them with adequate flexibility (see table 1), or that the program's requirements for completing an application were excessive, especially

[10]Two did not apply due to a change in administration, one was ineligible to apply because it was under a compliance agreement, and one did not apply because it did not have an approved assessment system.

having to complete 4 to 10 local performance agreements with school districts. The Office of Management and Budget estimated that it would take 640 hours to complete an application. Officials we spoke with in Florida confirmed that the process of identifying school districts for local performance agreements and developing those performance agreements took considerable time and effort.

The key reason why school districts did not apply for Local-Flex was a lack of awareness about the program, while districts that were aware of the program cited various other reasons for not applying. Specifically, 20 of 26 districts in our study that had not applied for or expressed intent to apply for Local-Flex did not apply because they were unaware of the program. The other 6 districts were aware of Local-Flex but did not apply because they said they had either enough flexibility without Local-Flex or other priorities. For the 8 districts that expressed intent to apply for Local-Flex, 3 said they did not apply because Education did not provide follow-up information, 2 cited insufficient resources to complete the application, 1 decided not to apply due to the small amount of resources that could be consolidated, 1 did not apply because the expression of intent to apply was done in error, and 1 did not apply because it was advised by Education that it would be unlikely to be awarded flexibility because the school district was under state control for poor academic performance.

Finally, some school districts were not eligible to apply for Local-Flex because their states indicated the intent to apply for State-Flex, thereby locking school districts out from applying for Local-Flex. Specifically, under NCLBA, only districts in states not receiving State-Flex authority are eligible to apply for Local-Flex. Also, districts in states that notified Education of their intent to apply to the State-Flex program by May 8, 2002, would not be eligible to apply for Local-Flex. Eleven states—Alabama, Arizona, Colorado, Delaware, Florida, Illinois, Massachusetts, Nebraska, Pennsylvania, Tennessee, and Texas—signaled their intent to apply by the deadline thereby making districts in their states ineligible to apply directly for Local-Flex.[11] Instead, 4 to 10 districts in these states would be eligible for flexibility under Local Performance Agreements included in their state's State-Flex agreement, if these states applied.

[11]Three more states—Georgia, North Carolina, and South Carolina—indicated interest in State-Flex after the deadline, which did not have the effect of preventing school districts in their state from applying for Local-Flex.

Education's Communications about Flexibility Demonstration Programs Not Targeted at Those Best Positioned to Apply

Education took steps to publicize the programs, provided some guidance, and has begun reviewing program applications. However, its communication strategy was not targeted at those states and districts in the best position to apply—that is, where the states had approved accountability plans or established student assessment systems. Additionally, according to the 1 state and 3 districts that applied, more guidance was needed on program procedures and documentation requirements. Finally, while Education has developed criteria and procedures for reviewing and awarding flexibility, it is too early to comment on its processes because it has yet to award flexibility to any state or district.

As part of the application process for these two programs, Education publicized and sought feedback through the *Federal Register*. Education also disseminated information about the programs to state and school district officials at Title I conferences and mailed program information about Local-Flex to about 200 large school districts.

While Education did provide information about the flexibility programs through routine channels, it did not pursue departmental goals to aggressively publicize the programs. Specifically, in response to the new flexibility provisions in NCLBA, Education, in its 2002-07 Strategic Plan, established a strategic objective to provide increased flexibility and local control. To accomplish this, Education set goals to publicize flexibility provisions by aggressively communicating flexibility opportunities, including State- and Local-Flex, to states and school districts. However, by providing information primarily through routine channels, Education did not make use of available information to identify and target potential applicants that would have been in the best position to apply. Specifically, Education acknowledged that it did not focus its communications on the 5 states that had accountability plans approved prior to the State-Flex application deadline or the 17 states that had approved statewide assessment systems as of February 12, 2003.[12] While these 17 states technically did not have approved accountability plans at the time State-Flex applications were due, these states and their school districts were in a better position to develop and use data on student achievement needed for State- and Local-Flex applications.

[12]Under Elementary and Secondary Education Act (ESEA) states were required to establish statewide assessment systems and standards for Title I students.

While all 11 states and 2 of 3 school districts that received and reviewed program applications reported that the guidance for completing the application was clear, officials from the state and districts that applied believed more guidance would have been helpful to clarify documentation requirements once the program is implemented. For example, officials in both Seattle and Florida said that more guidance was needed on what the requirements were for drawing down consolidated grant funds. Typically, a school district would draw down funds for a specific grant program, such as Innovative Programs—and then report back to the state on how those funds were used. However, officials in both Seattle and Florida said that more guidance was needed on what procedures and documentation were required to draw down combined State- and Local-Flex funds and how districts were to report on the use of those funds. Applicants also wanted more guidance about what information they needed to provide to Education to demonstrate that federal funds they sought to consolidate were not going to be used to supplant state and local funds. Education officials acknowledged that accounting for consolidated funds was a challenge that varied from state to state, but they would be willing to work with states to develop a system to track federal funds.

Education has developed criteria and procedures for reviewing and awarding the programs, but it is too early to comment on its processes because, as of May 2003, it has not made any awards to any state or district. Specifically, the criteria for awarding the programs under these flexibility provisions include (1) identification of achievement gaps, (2) quality of strategies for making AYP and narrowing achievement gaps, (3) quality of management plans to implement and monitor the programs, and (4) adequacy of resources. To award these programs, Education will use a panel of external peer reviewers representative of parents, teachers, state educational agencies, and who are familiar with educational standards, assessments, accountability, curriculum, instruction, and staff development.

Conclusions

The 1 state and 3 school districts that applied for the flexibility demonstration programs did so because they had the leadership and capacity to identify ways they could use additional flexibility to improve student achievement. However, Education may have discouraged applications from other interested states by establishing application deadlines for the State-Flex demonstration program that conflicted with other requirements of NCLBA. Not only were states busy completing accountability plans, but the states needed student achievement data developed as part of these plans in order to apply for the flexibility

programs. Consequently, by establishing the State-Flex application deadline near the deadline for draft accountability plans, Education placed most interested parties in the position where they could only apply using unapproved information and might be required to spend additional time redoing their application if Education were to require changes to their accountability plan.

Also, states and school districts in the best position to apply (i.e., that had met or are close to meeting accountability requirements) may not have applied because, among other reasons, Education's communication and guidance was not strategically targeted. Education has acknowledged that its communications were not targeted at those states and districts in the best position to apply. Without increased awareness of the programs and their benefits, states and districts that may have benefited from additional flexibility may miss opportunities to participate. Given that the flexibility demonstration programs are in the early phases of design and implementation and that they are linked critically to other new NCLBA accountability requirements, it is clear that Education faces a challenge to find eligible applicants with the time and information needed to participate. Thus, targeting information at potential applicants and ensuring that they have the time and information needed to apply for the flexibility programs are important.

Recommendation for Executive Action

We recommend that the U.S. Department of Education better target information to states and districts in the best position to apply for additional flexibility. This could include follow-up with states and districts expressing interest in the programs and providing information to states and districts that have met or are close to meeting accountability requirements.

Agency Comments

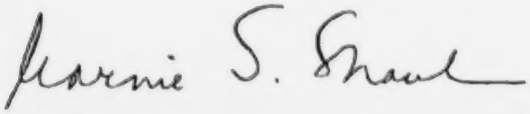
The Department of Education provided written comments on a draft of this report, which we have summarized below and incorporated in the report as appropriate. (See app. II for agency comments.) Education generally agreed with what we presented in the draft report and with the thrust of the recommendation that it better target information to states and districts in the best position to apply for additional flexibility. Education noted its continued commitment to better targeting information to states and school districts and stated that it would continue its efforts to refine strategies for informing potential applicants about the new flexibility authorities and their benefits. Education also said that once

state accountability plans are approved, the timing of flexibility competitions should no longer be an issue.

In its comments, Education pointed out that "burdens" cited by potential applicants as a reason for not applying were created by statutory, not administrative, requirements. In our report we did not attempt to trace the source of the perceived burdens to either statutory or administrative provisions. Rather, we attempted to portray state and school district officials' views on the reasons why they chose not to apply. Education officials also provided technical comments that we incorporated into the report where appropriate.

We are sending copies of this report to the Secretary of Education and other interested parties. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staffs have any questions or wish to discuss this material further, please call me on (202) 512-7215 or Harriet Ganson on (202) 512-7042. Other GAO contacts and staff acknowledgments are listed in appendix III.



Marnie S. Shaul
Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methodology

To identify factors that influenced officials' decisions to apply or not to apply for the programs, we contacted officials from the 1 state and 3 school districts that applied for the programs, all the states and school districts that expressed intent to apply for the programs but did not apply, and a selection of those that neither expressed intent to apply nor applied for the programs. For those that did not express intent to apply we selected 11 states and 26 districts. The 11 states were selected from the Census geographic regions, divided into large and small states in terms of total student enrollment. We selected the 26 districts from across the country to include large and small districts—in terms of student enrollment—located in urban and suburban areas and small districts located rural areas. (See table 3.) For those that did not apply, we were able to contact and conducted structured interviews with officials from 12 states and 8 school districts that signaled their intent to apply and officials from 9 states and 26 school districts that did not signal their intent to apply. For applicants, we reviewed copies of the four applications submitted for the programs and conducted site visits to two applicants—Florida and Seattle.

Table 3: Number of States and School Districts Included and Selection Criteria

Group	States	School districts	Selection criteria
Applicants	1	3	All applicants.
Those that expressed intent to apply but did not apply	13	8	All of those who expressed interest but did not apply.
Those that neither expressed interest nor applied	11	26	For states, we selected large and small states based on total student enrollment and geographic locations. For school districts, we divided districts into five groups: rural, suburban small, suburban large, urban small, and urban large. We selected districts randomly from within each group.
Total	**25**	**37**	

Source: GAO analysis.

To review the extent to which the Department of Education publicized, provided guidance to interested applicants on, and established a process to review and award flexibility demonstration programs, we conducted structured interviews with Education officials and reviewed Education's documentation. We also discussed Education's guidance with states and school district officials. We conducted our work between January 2003

and May 2003 in accordance with generally accepted government auditing standards.

Appendix II: Comments from the U.S. Department of Education

UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

June 2, 2003

Ms. Marnie S. Shaul
Director
Education, Workforce,
and Income Security Issues
United States General Accounting Office
Washington, DC 20548

Dear Ms. Shaul:

This is in response to your draft report entitled "Flexibility Demonstration Programs: Education Needs to Better Coordinate Deadlines and Target Program Information" (GAO-03-691). We have carefully reviewed the document and appreciate this opportunity to provide comments to you.

Coordination of Deadlines

Your report recommends that the U.S. Department of Education better coordinate deadlines related to the No Child Left Behind Act (NCLB) so that potential flexibility applicants have the time and information needed to prepare an application. We appreciate the concerns that you have expressed concerning the timing of the State-Flex and Local-Flex competitions, especially in light of the Title I accountability deadlines.

During the early implementation stages of the NCLB, we considered various options for scheduling and conducting the State-Flex and Local-Flex competitions. We recognized that States and districts were working to meet the new Title I accountability requirements and other new requirements, and that many might not be prepared to apply for the flexibility authorities at that time. However, some States and districts were ready to take advantage of these authorities and we wanted to ensure that they had an opportunity to do so at the earliest possible date. We determined that the most reasonable solution would be to conduct multiple State-Flex and Local-Flex competitions over a period of time and held our first competitions in 2002. We announced that policy in *Federal Register* notices. States and districts that were ready to take advantage of the new flexibility authorities were given an early opportunity to do so; those that needed additional time were not penalized and will be able to submit applications at a later date.

As your report indicates, States were required to submit their Title I accountability workbooks to the Department by January 31, 2003. Their accountability plans were due by May 1, 2003. We are very hopeful that all States will have their accountability plans approved shortly, so the timing of the flexibility competitions should no longer be an issue.

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Outreach Strategies

Your report recommends that the Department target information to States and districts in the best position to apply for additional flexibility. You have suggested that we follow up with States and districts expressing an interest in the flexibility authorities, and that we provide information to those that have met or are close to meeting the Title I accountability requirements.

As your report reflects, we have disseminated information about the flexibility programs through various means – not only in *Federal Register* notices, but also in guidance documents, at Title I and other conferences, and in correspondence to States and the larger school districts. We made a concerted effort to contact the Nation's 200 largest school districts because we believe that districts that receive large concentrations of funds under the programs affected by Local-Flex are most likely to benefit from that authority.

As they have implemented programs under the NCLB – including the new Title I accountability provisions – States and districts have gained a greater appreciation of how Federal programs can best be used to address their particular needs. We will continue to refine our strategies for informing them about the new flexibility authorities and how they can serve as important tools in tailoring Federal resources to facilitate State and local efforts to improve student academic achievement.

Additional Comments

We suggest that the report highlight more clearly a major difference between "transferability" and the other flexibility provisions cited (State-Flex, Local-Flex, and REAP). Under transferability, funds are considered to be transferred from one program to another and, as a result, are subject to all of the requirements of the receiving program. Under the other flexibility provisions, however, the funds are not considered to be transferred. Rather, the grantee is permitted to spend the affected funds on a broader range of activities without having to comply with all of the requirements of the program under which those activities are authorized. Consequently, there is significantly more flexibility in how the funds can be spent under the flexibility demonstration programs than under transferability.

We also recommend that the report note that some of the referenced "burdens" faced by entities seeking to implement the flexibility authorities are actually statutory requirements. For example, the report notes that some States indicated that the time and effort required to complete the State-Flex application and develop agreements with four to ten districts exceeded the anticipated benefits. We suggest that the report reflect that the legislation mandates that each applicant propose to enter into local performance agreements with four to ten of its districts, at least half of which must be high-poverty districts. This is, in other words, not a "burden" created administratively or one that we can alter.

Finally, we suggest that Table 1 of the report indicate that a total of up to 150 districts (70 districts under the State-Flex authority and 80 districts under Local-Flex) have the opportunity to enter into performance agreements under which they may consolidate certain Federal education funds. We have already transmitted some additional suggestions for technical changes to the report to make it more accurate.

In light of the progress that States have made in meeting the Title I accountability requirements and the increased knowledge that they have gained concerning NCLB requirements and opportunities, we are hopeful that many more States and districts will apply for State-Flex and Local-Flex authority in the next round of competitions to be held in the upcoming school year.

Again, we appreciate your efforts in preparing this report and providing us with an opportunity to submit these comments. Please feel free to contact us if you would like to discuss any of these matters further.

Sincerely,

Eugene W. Hickok

Eugene W. Hickok

Appendix III: GAO Contacts and Staff Acknowledgments

GAO Contacts

Bryon Gordon, (202) 512-9207, gordonb@gao.gov
Jason Palmer, (202) 512-3825, palmerjs@gao.gov

Acknowledgments

In addition to those named above, Patrick DiBattista and Lynn Musser made key contributions to the report.

Related GAO Products

Disadvantaged Students: Fiscal Oversight of Title I Could Be Improved. GAO-03-377. Washington, D.C.: February 28, 2003.

Elementary and Secondary Education: Flexibility Initiatives Do Not Address Districts' Key Concerns About Federal Requirements. GAO/T-HEHS-00-51. Washington, D.C.: January 25, 2000.

Ed-Flex Program: Increase in Flexibility Useful but Limited by Scope of Waiver Authority. GAO/T-HEHS-99-67. Washington, D.C.: February 25, 1999.

Elementary and Secondary Education: Ed-Flex States Vary in Implementation of Waiver Process. GAO/HEHS-99-17. Washington, D.C.: November 13, 1998.

Elementary and Secondary Education: Flexibility Initiatives Do Not Address Districts' Key Concerns About Federal Requirements. GAO/HEHS-98-232. Washington, D.C.: September 30, 1998.

Regulatory Flexibility in Schools: What Happens When Schools Are Allowed to Change the Rules? GAO/HEHS-94-102. Washington, D.C.: April 29, 1994.

Regulatory Flexibility Programs. GAO/HRD-94-51R. Washington, D.C.: November 3, 1993.

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